

Marc E. Angelucci, Esq. (SBN 211291)

Appearing *Pro Hac Vice*

LAW OFFICE OF MARC E. ANGELUCCI

410 N. Maryland Avenue

Glendale, CA 91206

Telephone: (626) 319-3081

Facsimile: (626) 236-4127

Email: Marc.Angelucci@yahoo.com

Attorney for Plaintiff, James Lesmeister

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

JAMES LESMEISTER, Individually
and on behalf of others similarly
situated,

PLAINTIFF,

v.

SELECTIVE SERVICE SYSTEM;
LAWRENCE G. ROMO, as Director of
SELECTIVE SERVICE SYSTEM; and
DOES 1 through 50, Inclusive,

DEFENDANTS.

Civil Action No. 4:16-cv-03362

**NOTICE OF PLAINTIFF'S MOTION FOR
LEAVE TO FILE FIRST AMENDED
COMPLAINT AND TO CHANGE VENUE**

**Request for Telephonic
Appearance or Decision without
Appearances**

**Honorable Gray H. Miller
Action Filed: April 4, 2013**

PLEASE TAKE NOTICE that pursuant to United States Code, Title
28, Section 1404(a), Plaintiff will bring the following Motion for
Leave to File a First Amended Complaint and to Change Venue to the
District Court of California, either in Central District (where the
case was originally filed), or in the Southern District.

1 This Motion is based on the facts that Plaintiff wishes to add
2 National Coalition For Men ("NCFM"), who was previously dismissed
3 without prejudice for lack of organizational standing, and to add
4 NCFM member Anthony Davis (together, NCFM and Davis will be
5 hereinafter called "Proposed Plaintiffs"), and that NCFM's national
6 headquarters is located in San Diego, California, Davis is a
7 resident of San Diego, California, and counsel for Plaintiff and
8 Proposed Plaintiffs resides and practices in Los Angeles,
9 California. This motion is based on the Memorandum attached hereto,
10 and the proposed First Amended Complaint filed herewith. This
11 Motion is made following a conference pursuant to Local Rule 6(c)1.
12

13
14 Respectfully Submitted.

15 Law Office of Marc E. Angelucci
16

17 Date: 1/26/17

18 By: // Marc E. Angelucci //
19 Marc E. Angelucci, Esq.
20 Attorney for Plaintiff,
21 James Lesmeister
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Civil Action No. 4:16-cv-03362

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR LEAVE TO
FILE FIRST AMENDED COMPLAINT AND
TO CHANGE VENUE**

**Honorable Gray H. Miller
Action Filed: April 4, 2013**

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 4, 2013, Plaintiff, and NCFM, filed this lawsuit challenging the Constitutionality of the sex discrimination in the Military Selective Service Act ("MSSA") requiring only males to register for the draft.

1 On July 29, 2013 the United States District Court, Central
2 District of California ("Central District Court of California") in
3 Los Angeles granted Defendants' Motion to Dismiss on the sole ground
4 that the case was not ripe. Plaintiffs appealed.

5 On February 19, 2016, the United States Court of Appeal, Ninth
6 Circuit, reversed the order. On remand, Defendants filed another
7 Motion to Dismiss in which they challenged Plaintiffs' standing.
8

9 On November 9, 2016, the Central District of California ruled
10 that Lesmeister has standing, but NCFM does not have associational
11 standing because NCFM did not name any members who would have
12 standing. NCFM was dismissed without prejudice and the court
13 transferred the case to the Southern District Court of Texas,
14 Houston Division ("Southern District Court of Texas"), where
15 Lesmeister, resides. On November 16, 2016, the Southern District
16 Court of Texas ordered the parties to file a joint case management
17 plan by December 30, 2016.
18
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20 On November 16, 2016, Defendants emailed Plaintiff's counsel
21 stating Defendants intend to file another motion to dismiss to
22 address issues the Central District of California did not address,
23 and Defendants requested an agreement on an extension of time to
24 file an answer or motion to dismiss.
25

26 On December 1, 2016, Plaintiff replied stating they intend to
27 amend their complaint to add NCFM and a member of NCFM in San Diego,
28

1 and asked whether Defendants would oppose the motion. On December 2,
2 2016, Defendants replied that would not oppose a motion to amend as
3 long as the parties can agree on the response deadline, but that
4 they cannot say whether they would oppose the motion to transfer
5 until they see the motion itself.

6 On December 9, 2016, Plaintiff and Defendants filed a joint
7 motion requiring Plaintiff (and Proposed Plaintiffs) to file their
8 motion by January 27, 2017, Defendants to respond by February 15,
9 2017, Plaintiff to reply by February 27, 2017, and Defendants to
10 respond to the operative complaint within 45 days of the date of
11 entry of the amended complaint if leave to amend is granted.
12

13
14 **II. REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

15 This motion to amend is unopposed by Defendants. Plaintiff and
16 NCFM filed herewith a proposed First Amended Complaint that adds
17 NCFM and Davis as plaintiffs, and respectfully request leave to
18 amend so that NCFM and Davis can be included as plaintiffs.
19

20 An organization that has not suffered any injury itself may
21 nevertheless sue in a representative capacity for injuries of its
22 members by alleging that (1) At least one member has standing in his
23 or her own right to present the claim asserted by the association;
24 (2) The interests sought to be protected are germane to the
25 association's purpose; and (3) Neither the claim asserted nor the
26 relief requested requires that the members participate individually
27

1 in the suit. *Hunt v. Washington State Apple Advertising Comm'n* (432
2 US 333, 343 (1977)). As long as resolution of the claims benefits
3 the organization's members and the claims can be proven by evidence
4 from representative injured members, the participation of those
5 individual members will not thwart associational standing.
6 *Association of American Physicians & Surgeons, Inc. v. Texas Med.*
7 *Bd.* (5th Cir. 2010). 627 F.2d 547, 522.

9 In this case, NCFM has associational standing because, as
10 Paragraph 5 of the First Amended Complaint allege, some NCFM
11 members, including Plaintiff Davis, would otherwise have standing to
12 sue in their own right, the interests NCFM seeks to protect are
13 germane to NCFM's purpose and neither the claim asserted, nor the
14 relief requested, requires the participation of individual NCFM
15 members in this lawsuit. And as Paragraph 6 of the First Amended
16 Complaint asserts, some of NCFM's members are males ages 18-25 or
17 who will be age 18-25 at some time relative to this lawsuit and the
18 relief it seeks, are harmed by or subject to the sex-discriminatory
19 registration requirements, are United States citizens, are not
20 members of the military or students at military academies or
21 otherwise exempt from the draft, and support equal treatment of
22 males and females, and some NCFM's members have or are likely to
23 have male children or loved ones who meet the criteria.
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Davis, a member of NCFM, has standing for the same reasons Lesmeister has already been found to have standing by the Central District of California. He is a male within the age of 18-25, a resident and U.S. citizen residing in San Diego, California, is in the age group required by Defendants to register for the military draft and has recently registered for the military draft as is required of him as a male, is harmed by or subject to the sex-discriminatory registration requirements, is not a members of the military or a student at military academies or otherwise exempt from the draft, and he supports equal treatment of males and females.

Therefore, Plaintiff respectfully requests leave to file and First Amended Complaint filed herewith.¹

III. REQUEST FOR A CHANGE OF VENUE TO THE DISTRICT OF CALIFORNIA

Where venue is proper, courts may transfer to another district "for the convenience of parties and witnesses, in the interest of justice," if the transfer is to a district where the case might have been brought. 28 USC § 1404(a).

A plaintiff's choice of forum is accorded substantial weight in proceedings under 28 USC § 1404(a). *Securities Investor Protection*

¹ The First Amended Complaint filed concurrently herewith also omits two causes of action that were previously in the initial Complaint but later dismissed, namely, Count II (Violation of Fourteenth Amendment) and Count III (Violation of 28 U.S.C. § 1983).

1 *Corp. v. Vigman* (9th Cir. 1985) 764 F.2d 1309, 1317; *Lewis v. ACB*
2 *Business Services, Inc.* (6th Cir. 1998) 135 F3d 389, 413.

3 Of course, a Plaintiff's choice should not be given "inordinate"
4 weight. *In re TS Tech USA Corp* (Fed Cir. 2008) 551 F2d 1315, 1320.
5 And the venue transfer provisions of Section 1404(a) "are not meant
6 to merely shift the inconvenience to the plaintiff." *Reed Elsevier,*
7 *Inc. v. Innovator Corp.* (SD OH 2000) 105 F. Supp.2d 816, 821.

9 Plaintiff and NCFM chose to file this action in the Central
10 District of California because NCFM's national office is in San
11 Diego, California, a two hour drive from Los Angeles, and NCFM has
12 no office in Texas. Also, NCFM is represented on a non-profit basis
13 by a Los Angeles attorney. Thus, the Central District of California
14 is the most convenient forum. Defendants will likely continue to
15 challenge NCFM's standing, so NCFM's person most knowledgeable may
16 have to testify. Associational standing has additional requirements
17 beyond what individual plaintiffs must establish. Davis will
18 probably have to testify as well, which makes at least two
19 plaintiffs in California that will likely have to testify.

22 Between Los Angeles and San Diego, the Los Angeles court would
23 also be most convenient for counsel for Plaintiff and Proposed
24 Plaintiffs. Nonetheless, San Diego is only a 2 hour drive, so the
25 Central or Southern districts are both more convenient than Texas.

27 Courts have held that, where a plaintiff is a private individual

1 and defendant is a large corporation, defendant's assertion
2 regarding monetary expense and difficulty in litigating in a distant
3 forum are likely to be disregarded. *Miracle v. NYP Holdings, Inc.*
4 (D HI 200) 87 F.Supp,2d 1060, 1073). Thus, the capacities of the
5 parties are considered in determining convenience of the forum.

6 In this case, NCFM is a non-profit organization with its national
7 office in San Diego, California, and with no office in Texas.
8 Counsel for Plaintiff, and for NCFM and Davis, resides and practices
9 in Los Angeles, California. By contrast, Defendants are the federal
10 government, and their attorneys have offices in both Los Angeles and
11 San Diego. They are not inconvenienced by having the venue in
12 California. Nor have they ever alleged they are unduly burdened by
13 the case being in California. Having the venue in California would
14 require the least amount of travel for all counsel in this case.

17 Plaintiffs do not contend that venue in Texas is improper.
18 However, it is worth noting where there is no real property involved
19 in the action, venue is proper where the plaintiffs reside (28
20 U.S.C. § 1391, subd. (e)(1)(C)), and a non-profit organization
21 "resides" where they have an office. *Center for Biological Diversity*
22 *v. National Science Foundation*, D.C.Cal.2002, 2002 WL
23 31548073, 55 ERC 1873; *Natural Resources Defense Council v. Abraham*,
24 C.A.9th, 2001, 244 F.3d 742. In this case, NCFM's national office
25 is in San Diego, California, and NCFM has no office in Texas.

Moreover, the events giving rise to the cause of action substantially occur in California, the most populous state, as men in California are subject to and register under the MSSA, while similarly situated women are not required or allowed to register.

Therefore, Plaintiff respectfully requests that venue transfer to the District Court of California, either the Central District near Los Angeles, or the Southern District near San Diego.

IV. REQUEST FOR TELEPHONIC APPEARANCE OR HEARING WITHOUT APPEARANCES

Plaintiff's attorney lives and practices in California. Accordingly, for the sake of judicial economy and convenience, Plaintiff requests that this Motion be decided either by telephonic appearance, or on the pleadings alone without any appearances.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this honorable Court grant leave to file the concurrently filed First Amended Complaint, and that the case be transferred to the United States District Court of California, either the Southern District or the Central District.

Respectfully Submitted.

Law Office of Marc E. Angelucci

Date: 1/26/17

By: // Marc E. Angelucci //
Marc E. Angelucci, Esq.
Attorney for Plaintiff,
James Lesmeister

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2016, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

Date: 1/26/17

By: // Marc E. Angelucci //

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with Defendants' counsel about the relief requested in the foregoing and Defendants' counsel indicated Defendants' would not oppose the motion to amend as long as we agreed on a scheduling order, which we have agreed to and filed with the Court. Defendants' counsel stated they cannot indicate whether they would oppose the Motion to Change Venue until they see the motion itself.

Date: 1/26/17

By: // Marc E. Angelucci //

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ORDER ON NOTICE OF PLAINTIFF'S
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT AND TO CHANGE
VENUE

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Appearance or Decision without
Appearances

Honorable Gray H. Miller
Action Filed: April 4, 2013

GOOD CAUSE APPEARING, Plaintiff's Motion for Leave to File a
First Amended Complaint and to Change Venue is granted. The First
Amended Complaint filed concurrently with said Motion is deemed
filed as of _____, 2017. The case shall be transferred to

DATE:

DISTRICT COURT JUSTICE